PP

v.

DATO' SERI ANWAR IBRAHIM
(DECISION REGARDING COUNSEL FOR CHRISTOPHER FERNANDO'S OBJECTION TO THE ATTORNEY GENERAL'S APPLICATION TO REPRESENT DATO' AUGUSTINE PAUL)

HIGH COURT MALAYA, KUALA LUMPUR
HASHIM YUSSOF J
[CRIMINAL TRIAL NO: 44-18-99]
1 MARCH 2002

CONSTITUTIONAL LAW: *Attorney General - Extent of discretion to intervene in proceedings - High Court judge alleged to have committed contempt in High Court - Whether Attorney General had locus standi to act as counsel for said High Court judge in contempt proceedings*

At the hearing of the notice of motion by Mr Christopher Fernando to commit Dato' Augustine Paul for contempt in the High Court, counsel for Mr Christopher Fernando objected to the Attorney General's application to represent Dato' Augustine Paul in the proceedings asserting that the Attorney General had no *locus standi* to act on behalf of the alleged contemnor.

Held:

[1] The Attorney General's application to represent Dato' Augustine Paul in the proceedings was not to defend him as a private individual, but rather to defend the office of a High Court judge held by Dato' Augustine Paul; this was appropriate and proper as the Attorney General is the officer established under the Federal Constitution and the Government Proceedings Act 1956 to act as such. Since the learned Attorney General felt that there was, *prima facie*, no case of contempt established, there was no reason he could not step in to defend the office of the High Court judge, and prevent interference with the system of justice in this country.
(pp 189 g-h & 190 b-e)

[Objection dismissed.]

Case(s) referred to:
A-G v. Times Newspapers Ltd [1974] AC 273 ***(foll)***
PP v. Dato' Seri Anwar Ibrahim [1998] 4 CLJ 387 ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, s. 13
Federal Constitution, arts. 97, 122(B), 125(6), 126, 127(B), 132, 145(e)
Government Proceedings Act 1956, s. 24(2)

For the applicant - Karpal Singh (SN Nair, Gobind Singh Deo & Ramkarpal Singh): M/s Karpal Singh & Co
For the pp - Abdul Aziz Abdul Rahim (Tun Abdul Majid Tun Hamzah & Syed Marzidy Syed Marzuki)

Reported by Suresh Nathan

JUDGMENT

Hashim Yussof J:

At the hearing of the notice of motion by Mr Christopher Fernando filed on 3 October 2001 to commit YA Dato' Augustine Paul for contempt in the High Court at Kuala Lumpur, counsel for Mr Christopher Fernando on 18 January 2002 objected to the attorney general's application by notice of motion filed on 14 January 2002 to represent YA Dato' Augustine Paul in these proceedings on the following grounds:

1. That the attorney general has no *locus standi* to act on behalf of the alleged contemnor;

2. That Dato' Augustine Paul should appear in person or get a counsel from the private practice.

Mr Karpal Singh on behalf of Mr Christopher Fernando, submitted that if the judge is represented by the attorney general, it would be in conflict with the doctrine of separation of powers since the attorney general is the legal adviser to the government under art. 145(e) of the Federal Constitution.

It was further submitted that the attorney general can only represent someone who is a "public officer" which definition under art. 132 of the Federal Constitution does not include members or judges of the judiciary. Therefore counsel submitted, YA Dato' Augustine Paul should get his own private counsel.

Reference was also made to the 1988 constitutional crisis in the removal of the then Lord President, Tun Salleh Abbas whereby a tribunal was set up under art. 125 of the Federal Constitution and wherein Tun Salleh was not given any assistance by the attorney general then.

Further submission was put forth by Mr Gobind Singh Deo on behalf of Christopher Fernando that the attorney general has no automatic right of audience since it is not provided for under art. 145 of the Federal Constitution. It was also submitted that apart from art. 145 of the Federal Constitution, only s. 24(2) of the Government Proceedings Act confers the attorney general the right to represent a public officer in civil proceedings and since contempt proceedings are not civil in nature therefore the attorney general should have no right to represent Dato' Augustine Paul.

Mr Christopher Fernando also submitted that by accepting the services of the attorney general, Justice Dato' Augustine Paul has compromised the judiciary by being beholden to the attorney general. He even went to the extent of saying that Dato' Augustine Paul may even have committed a corrupt practice under the Emergency Essential Ordinance 1952 by using his public office for his pecuniary or other advantages.

In his reply senior federal counsel Dato' Abdul Aziz b Rahim on behalf of the attorney general, submitted that the only statutory powers regarding contempt are found in art. 126 of the Federal Constitution and s. 13 of the Courts of Judicature Act 1964. However, the right of the attorney general to appear in contempt proceedings are provided under the common law.

Reference was made to the case of *Attorney General v. Times Newspapers Ltd* [1974] AC where Lord Reid at p. 273 para G said:

> It is therefore up to the Attorney General to decide whether it is in the public interest that the Attorney General should act. It is not to protect the private rights of parties but rather to prevent interference with the administration of justice.

Dato' Abdul Aziz then submitted that if the attorney general can bring contempt proceedings in order to protect the system of justice, therefore it is also the duty of the attorney general to stop any attempt to bring any contempt proceedings which does not disclose any *prima facie* contempt.

Further it was submitted that the attorney general is not returning any favour to Justice Dato' Augustine Paul. The attorney general is merely appearing in order to protect the institution of the judiciary since a judge of the High Court is appointed by the Yang Di-Pertuan Agong under art. 127(B) of the Federal Constitution and therefore it follows that any attack on that high office will be the duty of the attorney general to defend it.

Without doubt any application to cite a judge of the High Court in this country for contempt will certainly be a matter of public interest and particularly so in the legal fraternity.

It is not disputed that the "public services" under art. 132 of the Federal Constitution does not include the office of the High Court judge as such. So what is the office of the High Court judge? I posed this question to Mr Gobind Singh Deo and he himself admitted he was not sure and therefore could not reply.

As submitted by Dato' Abdul Aziz, the High Court judge is appointed by the Yang Di-Pertuan Agong on the advice of the Prime Minister and after consultation with the Conference of Rulers under art. 122(B) of the Federal Constitution. Further, under art. 125(6) of the Federal Constitution, Parliament shall by law make provision for the remuneration of judges of the Federal Court which shall be accountable to the consolidated fund. By virtue of para (9) of the same article, the same provision applies to judges of the High Court. Article 97 of the Federal Constitution provides that all monies and revenues received by the federation shall be paid into and form a consolidated fund, which is called the "consolidated fund".

It is clear from the nature and method of appointment of and the provision for his remuneration that Dato' Augustine Paul exercises his powers as a High Court judge under the Federal Constitution and the Courts of Judicature Act. The words being the subject matter of the instant notice of motion were uttered by YA Dato' Augustine Paul in the course of the proceedings of Wilayah Persekutuan Criminal Trial No. 45-49-98 (*PP v. Dato' Seri Anwar Ibrahim* [1998] 4 CLJ 387). It is therefore done in the course of his duties as a judge of the High Court. Whether the words are contemptuous and if so, then whether Dato' Augustine Paul can be cited for contempt in his own court are issues to be determined later in these proceedings. For the immediate matter at hand, I cannot agree with the argument that the attorney general cannot represent Dato' Augustine Paul in these contempt proceedings. It cannot be said that Dato' Augustine Paul has compromised the judiciary by accepting the services of the attorney general to appear and defend him in these proceedings. It was suggested by counsel for Mr Christopher Fernando that the judge should get his own counsel from the private practice. If that were to happen will not Dato' Augustine Paul then be beholden to a member of the Bar? Would he then have not compromised his position with a member of the Bar? Since, as I stated earlier, the alleged contemptuous words were said in the course of his work, which office is established under the Federal Constitution, therefore it would be appropriate, and in fact if I may add, proper for the attorney general as the officer established under the Federal Constitution and under the Government Proceedings Act to step in and defend the judge not as a private individual but in the protection of such office and the institution of the judiciary and in the interest of the administration of justice in this country. I cannot see how it would affect the Doctrine of Separation of Powers by the attorney general doing so. The attorney general has exercised his discretion and acted in the public interest by his application to represent Dato' Augustine Paul in order to prevent interference with the administration of justice.

The tribunal proceedings resulting in the removal of the former Lord President Tun Mohd Salleh Abas cannot be equated with the present contempt proceedings as the facts are different. In the tribunal the attorney general was already acting for the prosecution. So how could he be acting for the defence?

I need to add that at the end of his submission, however, Mr Karpal Singh admitted that he did not really object to the attorney general intervening and to be heard but that his objection was for the attorney general to defend Dato' Augustine Paul. With respect, as I said earlier, the attorney general's application to represent Dato' Augustine Paul in these proceedings is not to defend him as a private individual, but rather to defend the office which Dato' Augustine Paul holds. I cannot but say that in these proceedings the position of Dato' Augustine Paul and that of the High Court judge is one and the same. It is not a case of Dato' Augustine Paul committing any known offence as distinctly defined by the Penal Code or any other statutory provisions. Here it is alleged that Dato' Augustine Paul committed contempt which is still to be determined. Rather, more importantly is the issue whether a High Court judge can be committed for contempt in his own court in the first place. Since the learned attorney general feels as submitted by senior federal counsel Dato' Abdul Aziz, that no *prima facie* contempt has been established by the words uttered by Dato' Augustine Paul in the course of the criminal trial before him, then I could see no reason why the attorney general cannot step in to defend the office of the High Court judge and prevent interference with the system of justice in this country.

As stated by Mr Karpal Singh about the Bar Council holding a watching brief – it is for a purpose, that is either to support or object to the motion. Likewise in the attorney general's case, I should say that the attorney general is intervening for a purpose too. It has either to be in support or in opposition to the motion. It is obvious from the attorney general's application that he is opposing the motion and asking this court to dismiss Mr Christopher Fernando's notice of motion. So I do not see any reason why the attorney general cannot act as counsel for Dato' Augustine Paul.

For the above reasons I would dismiss the objection raised by counsel for Mr Christopher Fernando and accordingly allow prayer (1) of the attorney general's application for the attorney general or his representative to appear as counsel for Dato' Augustine Paul.